

Jun 23, 2022

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOEL CHAVEZ-DURAN (3),

Defendant.

No. 4:21-CR-06028-MKD-3

ORDER ACCEPTING GUILTY PLEA
AND SETTING SENTENCING
SCHEDULE

On June 23, 2022, Joel Chavez Duran appeared before the Court and entered a plea of guilty to Count 1 of the Second Superseding Indictment filed on March 1, 2022, charging him with conspiracy to distribute 50 grams or more of actual (pure) methamphetamine, 400 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propenamide (a/k/a Fentanyl), and 5 kilograms or more of a mixture or substance containing a detectable amount of cocaine, all Schedule II controlled substances, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(ii), (vi), and (viii), 846. Defendant was

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1 represented by Adam R. Pechtel. Assistant United States Attorney Stephanie A.
2 Van Marter appeared on behalf of the United States.

3 The Court finds that Defendant is fully competent and capable of entering an
4 informed plea, that Defendant is aware of the nature of the charges and
5 consequences of the plea, and that the plea of guilty is knowing, voluntary, is not
6 induced by fear, coercion, or ignorance, and is supported by an independent basis
7 in fact establishing each of the essential elements of the crime. Therefore,
8 Defendant's plea of guilty is accepted.

9 Accordingly, **IT IS HEREBY ORDERED:**

10 1. A sentencing hearing is set for **November 10, 2022, at 11:00 a.m.**, in
11 Richland Courtroom 326. Absent truly exigent circumstances, the Court will not
12 consider a request for a continuance of sentencing unless: (1) the request is made
13 by written motion, (2) in accordance with LCivR 7, and (3) the motion and
14 supporting declaration are filed at least seven (7) days before the scheduled
15 sentencing hearing.

16 2. Defendant shall remain in the custody of the U.S. Marshals Service
17 pursuant to the detention order previously entered in this matter. ECF No. 15. **If a**
18 **sentence of incarceration is imposed, Defendant shall remain in the custody of**
19 **the U.S. Marshals Service.**

1 3. The United States Probation Office shall prepare a Presentence
2 Investigation Report (PSR) pursuant to Fed. R. Crim. P. 32(c).

3 4. Not later than **October 6, 2022**, the Probation Officer shall disclose the
4 PSR to Defendant, counsel for Defendant, and the United States. Disclosure of the
5 PSR shall be subject to the limitations imposed by Rule 32 of the Federal Rules of
6 Criminal Procedure.

7 5. Within 14 days of the disclosure of the PSR, counsel shall communicate
8 in writing to the Probation Office (and opposing counsel) any objections they may
9 have as to legal and factual errors or omissions; sentencing classifications;
10 sentencing guideline ranges; and policy statements contained in or omitted from
11 the report. Objections shall be numbered and identify the paragraph(s) to which
12 the objection applies. Objections shall address the PSR in sequential order,
13 beginning with the lowest numbered paragraph. If an objection is filed, the
14 Probation Officer shall conduct such additional investigation as is necessary to
15 assess the merits of the objection.

16 6. The Probation Officer shall submit the final PSR to the Court by **October**
17 **31, 2022**. The PSR shall be accompanied by an addendum setting forth any
18 objections counsel may have made, including those that have not been resolved,
19 together with the officer's comments and recommendations thereon. The
20 Probation Officer shall certify that the contents of the report, other than the

1 sentencing recommendations, including any revisions or addenda, have been
2 disclosed to counsel for Defendant and the United States, and that the addendum
3 fairly states any remaining objections. Except with respect to any written objection
4 made as required above, the PSR and computations shall be accepted by the Court
5 as accurate. Upon a timely objection by Defendant, the United States bears the
6 burden of proof on any fact that is necessary to establish the base offense level.
7 The Court, however, for good cause shown, may allow that a new objection be
8 raised at any time before the imposition of sentence. In resolving any disputed
9 issues of fact, the Court may consider any reliable information presented by the
10 Probation Officer, Defendant, or the United States.

11 Nothing in this Order requires the disclosure of any portions of the PSR that
12 are not disclosable under Fed. R. Crim. P. 32. The PSR shall be deemed to have
13 been disclosed: (1) when a copy of the report is physically delivered; or (2) one
14 day after the report's availability for inspection is orally communicated; or (3)
15 three days after a copy of the report or notice of its availability is mailed to
16 counsel, whichever date is earlier.

17 7. Not later than **October 26, 2022**, counsel shall file and serve all motions
18 and memoranda pertaining to Defendant's sentence, including departures and
19 variances, and sentencing recommendations.

- a. Counsel shall utilize the following format when preparing initial sentencing memoranda which are limited to 20 pages (absent prior Court permission to file an overlength brief): I. Offense Level & Criminal History, II. Departures, III. 18 U.S.C. § 3553(a).
- b. Under Section I. Offense Level & Criminal History, counsel shall discuss whether the PSR's Total Offense Level calculations (not including departures) and Criminal History calculation are correct or incorrect, providing legal authority for the party's position.
- c. Under Section II. Departures, counsel shall discuss whether a downward and/or upward departure is warranted under the Guidelines and provide legal authority for such position.
- d. Under Section III. 18 U.S.C. § 3553(a), counsel shall discuss whether the resulting guideline range provides a reasonable sentence sufficient, but not greater than necessary to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2), considering the other factors listed in § 3553(a).
- e. **FAILURE TO FILE AND SERVE SENTENCING MATERIAL BY THIS DATE, TO INCLUDE MOTIONS OR MEMORANDA FOR UPWARD OR DOWNWARD DEPARTURE, WILL BE DEEMED A WAIVER OF THE RIGHT TO DO SO.**

1 8. Not later than **November 3, 2022**, the opposing party shall file and serve
2 its response limited to no more than seven (7) pages.

3 9. If Defendant intends to qualify for the safety valve, the parties must
4 schedule a meeting to conduct a safety valve interview to determine if the
5 Defendant has met the requirements of U.S.S.G. § 5C1.2(a)(5) **no later than**
6 **October 20, 2022**.

7 10. If either party intends to call witnesses or proffer exhibits at sentencing,
8 witness and exhibit lists must be exchanged by the parties and provided to the
9 Court no later **November 3, 2022**.

10 11. Sentencings shall be scheduled for a total of 45 minutes. If it is believed
11 that the sentencing hearing will last longer than 45 minutes, counsel shall contact
12 Chambers no later than **November 3, 2022**.

13 12. All pending motions pertaining to Defendant are **DENIED as moot** and
14 all pending hearing and trial dates pertaining to Defendant are **STRICKEN** from
15 the Court's calendar.

16 13. By and through this Order, the District Court Executive is authorized to
17 accept Defendant's payment in the amount of \$100 per count, for a total of \$100,
18 toward Special Penalty Assessments.

1 **IT IS SO ORDERED.** The District Court Clerk is hereby directed to enter
2 this Order and provide copies to counsel, the United States Probation Office, and
3 the United States Marshals Service.

4 DATED June 23, 2022.

5
6 s/Mary K. Dimke
7 MARY K. DIMKE
8 UNITED STATES DISTRICT JUDGE
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